RECENT CASE NOTES

BILLS AND NOTES — CONSIDERATION — NOTE GIVEN BANK TO DECEIVE BANK EXAMINER.—A note given by the defendant to a bank was discharged by the defendant's bankruptcy. Later the defendant gave a new note, solely in order that it might be shown to the bank examiner as one of the bank's assets. The receiver of the bank brought suit to recover on the note. *Held,* that the receiver could recover. *Niblack v. Farley* (1919, Ill.) 122 N. E. 160.

There can be no question as to the soundness of the decision. No recovery, indeed, can be had by the payee on a note given without consideration. So with a director of a bank giving his own note to replace among the assets the worthless note of another. *First Natl. Bk. v. Felt* (1896) 100 Ia. 680, 69 N. W. 1057. And in general a defence good against the bank is good against its receiver. *Steelman v. Atchley* (1911) 98 Ark. 294, 135 S. W. 902. But where the note was given to puff the bank's apparent assets and so defraud the examiner and the public, courts properly refuse to allow the lack of consideration to be set up against the receiver. *Lyons v. Benney* (1911) 230 Pa. 117, 79 Atl. 250. There has been some disposition to limit this rule to cases where payment of the obligation is necessary to satisfy creditors. *Lyons v. Westwater* (1909, W. D. Pa.) 173 Fed. 111 (but there the promise not to enforce was in writing). But where the maker of the obligation was interested in the bank, the New York courts have been very ready to find actual consideration to him, through the benefit to the bank. *Hurd v. Kelly* (1879) 78 N. Y. 588; *Union Bank v. Sullivan* (1915) 214 N. Y. 332, 108 N. E. 558. This would not apply to the maker in the instant case, who was in no way connected with the bank. But a prior debt discharged by bankruptcy is consideration for a new promise to pay. The new promise is, to be sure, binding only according to its own terms. *Gillingham v. Brown* (1901) 178 Mass. 417, 60 N. E. 122. And here one of the terms was, that it was not to be enforced. But the "promise" having been put into the form of a note, the parol evidence rule comes into play. It has been very generally held that such additional terms as would defeat any purpose in making the instrument, may not be shown. See 4 Wigmore, *Evidence,* sec. 2443; *cf.* 5 Chamberlain, *Evidence,* sec. 3553. So generally with a promise to renew at the maker's option. *Hall v. First Natl. Bk.* (1899) 173 Mass. 16, 53 N. E. 154; *New London Credit Syndicate v. Neale* (C. A.) [1898] 2 Q. B. 487. And so concededly with a promise never to sue on the note. *Davis v. Randall* (1874) 115 Mass. 547; *First Natl. Bk. v. Foote* (1895) 12 Utah, 157, 42 Pac. 205; *Western Carolina Bank v. Moore* (1905) 138 N. C. 529, 51 S. E. 79; *Bailey v. Lankford* (1916) 54 Okla. 692, 154 Pac. 674. It is believed therefore, that in the instant case the defendant would have been held on his note even as against the bank. And it is believed that the interests of the bank's innocent creditors and stockholders would suffice to bar the defense of *in pari delicto. Cf.* (1919) YALE LAW JOURNAL, 699; but see *First Natl. Bk. v. Felt, supra,* at p. 685. And the defense that the note was signed as a mere sham might very properly be excluded, on the ground that recognizing such a sham as this would be contrary to morals and sound policy. See *Grand Isle v. Kinney* (1898) 70 Vt. 381, 41 Atl. 130; 4 Wigmore, *Evidence,* sec. 2406 and nn. 6, 7; but *cf.* cases 5 *ibid.* 608.

CONFLICT OF LAWS—JURISDICTION FOR DIVORCE—DOMICIL IN COUNTRY GRANTING EXTRATERRITORIAL RIGHTS.—The appellant, a British subject, made his permanent home in Egypt with the intention of residing there for an unlimited time, and

enjoyed extraterritorial rights. The respondent, his wife, petitioned for a divorce in England. *Held,* that as a matter of law it was not impossible for a British subject in this position to acquire an Egyptian domicil, that in fact the appellant had acquired such a domicil and that there was no jurisdiction in the English court to dissolve the marriage of the appellant with the respondent. *Casdagli v. Casdagli* (1919, H. L.) 120 L. T. Rep. 52.

See COMMENTS, *supra,* p. 810.

CONSTITUTIONAL LAW—DUE PROCESS—FORFEITURE.—A Georgia statute provided that all vehicles used to transport liquor, the sale or possession of which is prohibited by law, should be "seized, condemned and sold." An action was instituted to condemn the plaintiff's automobile, and claim was made that the statute was in violation of the "due process" clause of the federal constitution. *Held,* that the statute was valid. *Mack v. Westbrook* (1919, Ga.) 98 S. E. 339.

It is well settled that a state has the power to prohibit or restrict the manufacture, sale or possession of liquor. *Mugler v. Kansas* (1887, 123 U. S. 623, 8 Sup. Ct. 273. The state may, within the discretion of the legislature, adopt such measures as are reasonably necessary to make the power effective. *Crane v. Campbell* (1917) 245 U. S. 304, 38 Sup. Ct. 98 (prohibiting the possession of intoxicating liquors for personal use); *Kidd v. Pearson* (1888) 125 U. S. 1, 9 Sup. Ct. 6. Forfeiture of property on account of the misconduct of those in possession, treating the thing as the instrument of the offense—is within the principles of our legislation. *Smith v. Maryland* (1855, U. S.) 18 How. 71. It has proven a very satisfactory means of combating evils. See Calif. Red Light Abatement Laws, St. 1913, 20, 21 (house of assignation); Minn. St. 1913, ch. 562 (disorderly houses); Neb. Rev. St. 1913, secs. 8775-8792; Conn. Gen. St. 1918, sec. 3138 (boats used to catch fish in violation of the law); N. Y. Laws 1908, 1041, ch. 350, sec. 31c (containers of liquor) Consequently such statutes have been repeatedly upheld. *People v. Barbiere* (1917, Calif.) 166 Pac. 812; *Wilcox v. Ryder* (1914) 126 Minn. 95, 147 N. W. 953. But it seems that strict compliance with such a statute is requisite to its valid enforcement. *Philipps v. Stapleton* (1919, Ga.) 97 S. E. 885. As applied to the liquor traffic their value is obvious. Where the property was in the possession of a third person, however, there are some difficulties of application. The cases are not in complete accord as to whether knowledge is to be "imputed" to the innocent owner: i. e., as to whether his actual knowledge is immaterial. *People v. Casa Co.* (1918, Calif.) 169 Pac. 454 (knowledge of lessee "imputed"); *Clement v. Robach* (1909, Sup. Ct.) 115 N. Y. Supp. 162 (knowledge of bailee "imputed"); *Robertson v. Lane* (1914) 126 Minn. 78, 147 N. W. 951 (knowledge of conditional vendee "imputed"). Inasmuch as no personal criminal penalty is imposed, the tendency not to permit the innocent owner to set up lack of knowledge may be justified as necessary to the efficacy of the statute; and is the more defensible where, as in the instant case, the proceeds of the sale of the property are turned over to him. *Cf.* also *Chase v. Proprietors of Revere House* (1919, Mass.) 122 N. E. 162. Such a provision as this last is not, however, necessary to the validity of the statute. See *United States v. Brig Malek Adhei* (1844, U. S.) 2 How. 210, 233. A somewhat analogous situation is presented where the master is made criminally responsible for the acts of his servant. See (1919) 28 YALE LAW JOURNAL, 700.

CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES CLAUSE—CLASSIFICATION FOR TAXATION.—A Tennessee statute provided that any foreign construction company with its chief office outside of the state, operating in the state, should